

**IMMIGRATION OF ORIENTALS
INTO CANADA
WITH SPECIAL REFERENCE
TO CHINESE**

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✓ **Stanislaw Andracki**



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PREFACE

The history of Canada's policies in the matter of Chinese immigration from 1870 to the present time may be divided into four distinct periods:

The period of unrestricted immigration ending 1885; the period of the head-tax system from 1885 to 1923; the period of the exclusion of Chinese immigrants ending in 1947 and the period of limited admission of Chinese immigrants under the rules applicable to Asians in general.

The aim of this study has been to present, against the historical background, the most relevant facts bearing on the formation stage of Canada's policy in each of these periods and to examine the working of the various instruments of discrimination from the standpoint of their effectiveness.

Since it would be difficult to give all political and legal aspects of the question equal attention, a choice had to be made as to the emphasis on particular areas of research.

In a study covering a span of three generations and a period of vast social and political changes, it proved necessary to follow a flexible line in determining the relative importance of the various factors.

Thus, in analysing the earlier period special attention is given to the general background of the Oriental problem in British Columbia and to the methods of political pressure of the province towards obtaining the Dominion Government's action. The later period is examined from the standpoint of the legislative and administrative process of the Law dealing with Chinese immigration and the East Indian and Japanese question is briefly outlined as a part of a broader Oriental problem.

The circumstances of the Repeal of the Chinese Immigration Act required an inquiry into the nature and extent of public support given to the Chinese cause and the strategy of the Government at the time of repeal was examined against the background of general policy towards Orientals.

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In 1871, when British Columbia entered Confederation the number of Chinese seemed not to exceed 3000 although no statistically reliable data are obtainable for the period prior to 1885. However, the presence of the Orientals on Canada's Pacific Coast tended to generate tension strangely out of proportion to the size of the Chinese population in that early period of their infiltration into Canada. (1)

Already in 1864 a motion to tax the Chinese residents of British Columbia was tabled in the Legislative Assembly at Victoria but it failed to obtain the support of the majority. (2)

The 1864, motion, was, chronologically, the first attempt to secure legislative action against Orientals in Canada. It would be difficult to establish the time of the arrival of the first Chinese immigrants but there is evidence of their presence in 1858. (3)

The Gold rush on the Canadian Pacific coast, which attracted a large crowd of prospectors and adventurers from the United States of America brought the first group of Chinese into the Yale and the Fraser. But, even at that reckless and romantic period of the settlement of British Columbia, the Chinese seemed to represent a sober and cautious element among the gold seekers.

- (1) The expression "infiltration" is used here in the technical meaning of the word. See J. Isaac. "Economics of Migration", p. 151
- (2) Journals of British Columbia Legislative Assembly, 1864.
- (3) San Francisco Globe, May 16, 1858, quoted in F.W. Howay, "British Columbia" (Vancouver, 1914) Vol. 2. p. 567

While the white prospectors were on the move, continually lured away from older diggings towards still more promising regions, the Chinese were taking over the diggings abandoned by the whites. " The Chinese took only what the white man contemned, confining themselves to abandoned diggings or to work on the roads then in building ". (1)

When the best days of placer mining were gone the Chinese were gradually absorbed into more stable occupations such as gardening, farming, retail trade and domestic service. Large numbers of Chinese were to be found in canneries, coal mines and on road and later on, on railway construction.

It would be difficult to single out, at least in the first period of Chinese infiltration an act of physical violence in British Columbia against the Chinese labour. Bitterness, however, began to grow and the willingness of the Chinese to work for lower wages than the whites seemed to be the major cause of resentment especially around 1866, when British Columbia entered a period of an economic recession. There is little doubt that local politicians seized the issue of Chinese labour (2) and inflated its importance so as to serve their vote getting tactics.

However as late as 1871 hostility to the Orientals in British Columbia had not crystallized in legislative or administrative

(1) F.W. Howay, op. cit. p. 569

(2) E.R. Gosnell "British Columbia and British International Relations", Annals of American Academy of Political and Social Sciences, 45-46 (1913) p. 9

measures and it may be assumed that the decision of joining Confederation was made by British Columbia without her representatives being aware of the paramount importance of surrendering the field of immigration and of the control over aliens to the Federal Government. (1)

In 1872 another attempt to impose a special tax on "all Chinese within the province " failed in the British Columbia Legislative Assembly and a similar motion was defeated one year later. (2)

In 1875 the first measure of discrimination against the Chinese was entered on the Statute Book of British Columbia when the Legislative (3) Assembly passed an act disfranchising the Chinese in provincial elections. (4)

While the 1875 Act prevented the British Columbia Chinese from becoming an asset in terms of votes to any political party the law would not have any influence on the volume of Chinese immigration which was determined by purely economic considerations and the Chinese were not likely to be deterred from coming to British Columbia by legislation curtailing their political rights.

In 1876, the Legislative Assembly, perhaps alarmed at the growing numbers of Chinese in the province considered "the expediency of taking some steps towards preventing the country from being flooded with a Mongolian population, ruinous to the best interest of British Columbia, particularly her labouring classes". (5)

(1) C.J. Woodsworth, "Canada and the Orient" (Toronto, 1941) p. 24

(2) J.L.A.B.C. 1872-3 Vol. 2 p. 15

(3) ibid. 1873-4 p. 18

(4) Statutes of British Columbia 1875, (38 Vic) "An Act to make better provisions for the qualifications and registration of voters."

(5) J.L.A.B.C. 1876, p.48

A more direct attempt towards making the province less attractive to Chinese immigrants was made two years later when a special tax was imposed on Chinese residents of British Columbia. (1)

The Act, however, was held unconstitutional by the Supreme Court of British Columbia in a decision rendered by Justice J.H. Gray in *Tai Sing vs. McGuire*: " It is plain " says the decision " that the Act was not intended to collect revenue but to drive the Chinese from the country thus interfering at once with the authority reserved to the Dominion Parliament as to the regulation of trade and commerce, the rights, of aliens and the treaties of the Empire....

If, the interests of British Columbia in the future require legislation of that exceptional nature, which is the opinion of some practical and sensible men in the country, she must seek and obtain it through the proper channel that is, by the action of the Dominion Parliament". (2)

The above quoted passage is significant as it shows the awareness at least of a part of British Columbia public opinion that any efforts towards restricting Chinese immigration by provincial legislation would be of no avail because of the division of powers between the Federal and Provincial Governments as determined by the British North America Act of 1867.

- (1) S.B.C. 1878, Chap. 35 " An Act to provide for the better collection of provincial taxes from Chinese".
- (2) Report of the Royal Commission on Chinese Immigration, 1885, pp. 382-3

In addition, the power of disallowance of the Governor General was a constant warning to the British Columbia Legislature in their plans to establish a system of discrimination, which would not meet with the approval of the Dominion Government. A decade earlier, the efforts of California's legislation to put a stop to Chinese immigration were rendered inoperative by the judicial interpretation of the U.S.A. Constitution. (1) In Canada, unilateral action on the part of one province met with the opposition of forces seeking to reaffirm in practice the distribution of powers set out in the B.N.A. Act.

In institutional terms the Canadian and American situations were not comparable as each political system operated within a different constitutional framework. Neither (at least at the initial stage of the Chinese question) was the problem considered as politically important in Canada as the Anti-Chinese movement was hardly of any value to politicians east of the Rocky Mountains.

This was in marked contrast to the United States of America where "...the Anti-Chinese feeling entered into national politics and the leaders of the two parties pandered to it for the purposes of securing the vote of those States...in 1876 both parties inserted an Anti-Chinese plank in their platform". (2)

It may be interesting to note that the Australian Colonies, the forerunners of Anti-Chinese legislation, were not hindered in their action by the Imperial Government until 1877 and even then the

- (1) R.L. Garis, "Immigration Restriction", (New York, 1927) p. 286
- (2) R. Mayo-Smith "Emigration and Immigration" (New York, 1890) p. 236

reaction of the Colonial Office proved to be no obstacle to further acts of discrimination passed by the Australian Colonies in the last quarter of the nineteenth century. (1)

As on the whole, the public opinion of these colonies backed
(2)
Anti-Chinese legislation almost unreservedly the Australian pattern of Oriental discrimination was markedly different from the United States of America and Canadian patterns. While it would be a too sweeping conclusion to say that a Federal system protects the rights of the individual by its very existence, there is no doubt that at the early period of Oriental immigration into Canada, the Federal structure proved to be a safety device against legislation stemming from narrowly understood regional interests.

At the beginning of 1879, when A.N. Richards, Lieutenant Governor of the Province, addressed the Legislative Assembly in Victoria the course of future action on the part of the province was outlined in clear terms and in a language reminiscent of Justice Gray's oblique advice referred to above:

"Although your legislation upon the Chinese question has been

- (1) H.B. Keith. "Responsible Government in the Dominions". (Oxford, 1928) Vol.2. pp. 809-811
- (2) A.W. Tilby. "Australasia" (London, 1912) pp. 310-320

considered unconstitutional this circumstance should not deter you from adopting every legitimate means for the attainment of the end your late statute has in view". (1)

During the same Session an address was sent to the Dominion Government:

" Setting forth the baneful effects of the presence of Chinese in our midst and the necessity of such measures being adopted as will prevent their future immigration to this province".(2) The address was drafted by a Select Committee of the Assembly which was entrusted with the task of preparing a Report on the problem of Chinese in British Columbia. The Report contained a long list of charges against Chinese immigrants, which subsequently re-appear sometimes in exactly similar wording in dozens of resolutions, addresses and pleas calling for the exclusion of Chinese from British Columbia.

Even at that early stage of Chinese immigration it proved difficult to obtain reliable figures as to the number of Chinese residents of British Columbia, the number of arrivals and departures. The Committee, while confessing their inability to secure statistical information on the subject estimated the number of Chinese in British Columbia at about six thousand. (3)

- (1) J.L.A.B.C. 1879, p. 2
- (2) J.L.A.B.C. 1879, p. 55
- (3) J.L.A.B.C. 1879, p. XXIV

The Chinese according to the findings of the Select Committee were undesirable as settlers, because of their inassimilability, their willingness to work for lower wages and their "degraded morals" which were at variance with the standards of moral values shared by the white community. Thus, social, economic and ethical arguments were combined and given the cumulative force in order to demonstrate the incompatibility of Chinese immigration with the healthy development of British Columbia.

The Report of the Select Committee, adopted by the Legislative Assembly acknowledged " strong and growing antipathy to their (Chinese) presence in the community"...the same Report requests the Dominion Government to co-operate with the other colonies of her Majesty's Empire and add its powerful influence with a view of securing the object mutually aimed at, namely the restriction of further Chinese immigration to British Columbia as to the colonies referred to" (1)

It is significant that the text of the Address implied the necessity on the part of the Dominion Government of obtaining the Imperial Government's consent to any legislation which would restrict the immigration of Chinese into Canada.

The problem appeared to British Columbia legislators as being within the sphere, where the interests and commitments of the British Empire as a whole were putting restraints on the freedom of action of the Dominion.

(1) J.L.A.B.C. 1879, p. XXIV

The British Columbia Legislative Assembly was obviously anxious not to have the proposed Chinese exclusion legislation interfering with Great Britain's international obligations arising out of her treaties with China. This "Treaty Argument" was to become later on one of the weapons of the Federal Government in its delaying tactics in meeting the demands of British Columbia members in the Dominion Parliament. It may be interesting to note, that concern for Imperial commitments towards China was shown for the first time not by those opposing the restrictions, but, (rather surprisingly) by those pressing for the exclusion of Chinese.

While it was felt in British Columbia that the problem would require consultation with London, the attitude of the Imperial Government to Queensland's Anti-Chinese legislation seemed to inspire confidence in British Columbia legislators.

The colonies of Victoria and of Queensland were far away from British Columbia in terms of physical distance but they were exposed to the same pressure of Chinese immigration and their methods of dealing with the problem were full of interest to those sharing their misgivings on the other ridge of the Pacific Coast.

From the very beginning the story of Chinese exclusion in Canada developed on two different levels. On one hand, the Chinese question

was a purely local problem, which only for constitutional reasons could not be dealt with effectively by local (provincial) legislative measures. On the other hand, the very nature of the question was international and it is significant that the Report of the Select Committee of the British Columbia Legislative referred to above was not confined to the study of local conditions but contained reference to the United States of America and Australia. The fact was that the impact of Chinese infiltration in the Pacific area in the last quarter of the nineteenth century created conditions for spontaneous reactions on the part of the "white countries" affected and these reactions became channelled into two different systems of exclusion: the United States system of complete exclusion allegedly operating with the full consent of China, and Australian - Canadian pattern of unilateral measures of "head-tax" type, aiming at restricting the immigration of undesirable immigrants otherwise than through direct prohibition.

As the influence of the Australian approach to the problem proved much stronger in Canada than that of the United States of America it is necessary to review those Australian measures of exclusion which were to affect the course of Canadian Anti-Chinese legislation.

The first Act to exclude Chinese immigrants was passed by the Colony of Victoria in 1855 and it provided for a payment of \$10.00 for each male native of China, or any person born of Chinese parents. (2)

- (1) The term "complete exclusion" is not free of ambiguity. Exclusion as a rule is accompanied by the concept of "admissible" classes which constitute the exception from the principle of exclusion.
- (2) A.B. Keith, op. cit. p. 309

Furthermore the Act provided that no ship should bring more Chinese into the Colony than one for every ten tons of her tonnage. In 1865 a new Act " The Chinese Immigration Statute, 1865 " replaced the Act of 1855, giving extensive powers in the matter of exclusion to the Governor in Council.⁽¹⁾

Acts, similar to the Victoria Act, were passed by South Australia in 1857 and by New South Wales in 1861.⁽²⁾

Queensland passed an Act against the immigration of Chinese in 1855 and then again in 1877.

The latter Act introduced a special fee on Chinese gold miners and was disallowed by the Imperial Government on the grounds that " exceptional legislation calculated to exclude from any part of her Majesty's Dominions the subjects of a state at peace with her Majesty is highly objectionable. (3)

A little later, " The Colonial Office gave way before similar measures stipulating only that exclusion laws should not apply to British subjects of Chinese extraction from Hong Kong". (4)

There is no doubt that the Members of the British Columbia Legislative Assembly, when deliberating on the problem of Chinese immigration into the province, were aware of Australia's legislation

(1) *ibid.*

(2) *ibid.*

(3) H.F. MacNair, " The Chinese Abroad" (Shanghai, 1926) p. 70

(4) A.W. Tilby, " Britain in the Tropics ", quoted by MacNair, *op. cit.* p. 70