

SR-AS-BR-2686

SUBMISSION

TO:

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

**ON THE HUMAN RIGHTS VIOLATIONS OF CHINESE CANADIAN AND
CHINESE QUEBEC COMMUNITIES THROUGH THE CHINESE
IMMIGRATION ACTS AND CHINESE EXCLUSION ACT, BY THE
CANADIAN GOVERNMENT AND ITS CONTINUING VIOLATION OF
INTERNATIONAL LAW BY ITS FAILURE TO GIVE REDRESS**

SUBMITTED BY:

CHINESE CANADIAN REDRESS ALLIANCE

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In Montreal, Quebec
Canada

I. WHO WE ARE

All the Spikes but the Last

Where are the coolies in your poem, Ned?
Where are the thousands from China who swung
their picks with bare hands at forty below?
Between the first and the million other spikes
they drove, and the dressed-up act of
Donald Smith, who has sung their story?
Did they fare so well in the land they helped to
unite? Did they get one of the 25,000,000 CPR shares
Is all Canada has to say to them written in the Chi
immigration act?

~ F. R. Scott ~

FR Scott (1889 - 1985) was considered an important commentator on Canadian society and literature and a prominent participant in left-wing political activities. This poem was written in response to a poem by fellow poet Ned Pratt called "Towards The Last Spike", which was a tribute to the Scotsmen who did much of the planning for the construction of the CPR. The Chinese Immigration Act referred to in the last stanza was enacted in 1923 to prevent Chinese immigration. The Act was repealed in 1947.

The Chinese Canadian Redress Alliance (CCRA) is a network of Chinese-Canadian and Chinese-Quebec organizations and individuals working to achieve redress for the Chinese Canadian community and individuals and their families who have suffered from the effects of racist legislation, particularly the various Chinese Immigration Acts and Chinese Exclusion Act from 1885 until 1947. For nearly 20 years, organizations such as the Chinese Canadian National Council (CCNC), the National Congress of Chinese Canadian (NCCC), the Edmonton Head Tax Redress Committee, and many individuals as well as head tax payers and their descendents have fought in multiple ways to lobby the Canadian government for redress. The Chinese Canadian Redress Alliance is the latest metamorphosis of a coalition of Chinese Canadian organizations and individuals whose latest strategy is to unite the Chinese Canadian community under the Unity Declaration (please see attached Appendix A) in order to better lobby the Canadian government for redress.

II. Overview of Head Tax History

i. History of Chinese Immigration in Canada

Chinese immigration to Canada began around 1858 in response to the gold rush in British Columbia. When the Canadian Pacific Railway (CPR) was constructed between 1881 and 1885, Chinese workers were brought in from China to help build the railway. Between 1881 and 1884, over 15,000 Chinese people came to Canada. About 6,500 of these were employed directly by the CPR. During the same period of time, the country of China was being ravaged by anti-imperial wars against major European colonial powers, opium wars against British colonizers who wanted to dominate China by trade, civil strife, and natural disasters. These desperate conditions created migrant workers and a

population vulnerable to the promises made by colonial recruitment officers looking for cheap labour to help build conquered lands.

ii. The Chinese Head Tax and Exclusion Act

As soon as the CPR was completed, the Canadian dominion government moved to restrict the immigration of Chinese to Canada. The first federal anti-Chinese bill was passed in 1885. 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 Head Tax was increased to \$100 in 1900 and to \$500 in 1903. \$500 was equivalent to two years wages of a Chinese labour at the time. Meanwhile, Chinese were denied Canadian citizenship. In all, the Federal Government collected \$23 million from 81,000 Chinese immigrants through the Head Tax.

Despite the Head Tax, Chinese immigrants continued to come to Canada. In 1923, the Canadian Parliament passed the Chinese Immigration Act excluding all but a few Chinese immigrants from entering Canada. Between 1923 and 1947 when the Chinese Exclusion Act was repealed, less than 50 Chinese were allowed to come to Canada. Passed on July 1, 1923, Dominion Day, this law was perceived by the Chinese Canadian community as the ultimate form of humiliation. The Chinese Canadian community called this "Humiliation Day" and refused to celebrate Dominion Day for years to come.

iii. The Impact of the Head Tax and Exclusion Act

In addition to the Head Tax and Exclusion Act, Chinese immigrants faced other forms of discrimination in their social, economic and political lives. The most devastating impact of the Head Tax and the Exclusion Act, however, was found in the development of Chinese Canadian family. During the exclusion era, early Chinese pioneers were not allowed to bring their family, including their wives, to Canada. As a result, the Chinese Canadian community became a "bachelor society". The Head Tax and Exclusion Act resulted in long period of separation of families. Many Chinese families did not reunite until years after the initial marriage ceremony, and in some cases they were never reunited.

While their husbands were struggling abroad, many Chinese wives in China were left to raise their children alone. They experienced starvation and other extreme economic hardships. By the time that many arrived in Canada, they were middle-aged women who had to do hard manual labour to help their husbands pay back the crippling debts incurred for the head tax; as such, most of this generation of women never learned an official language and remained isolated, non-integrated, and marginalized in Canadian and Quebec societies. The effects of these racist legislations continue today, as the surviving widows of the Head Tax payers still suffer this isolation.

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 having been in Canada for nearly 150 years.

III. HISTORY OF COMMUNITY MOBILIZATION FOR REDRESS

In 1984, an elderly Chinese gentleman read the *Canadian Charter of Rights and Freedoms*. He thought to himself that since Canada has entered a new era of human rights, then it was time for the government to redress the human rights violations of the past. He approached his MP, Margaret Mitchell at the time, who in turn contacted the Chinese Canadian National Council. The CCNC began a national campaign for redress in 1984 by registering over 4000 Head Tax payers, spouses and descendants.

Since then, the Chinese Canadian community has carried out numerous actions to force the government to negotiate a compensation package for our community and head tax payers, surviving widows, and descendants. Post card and letter-writing campaigns, petitions drives, popular education, lobbying individual members of Parliament, both in government and in opposition, private members' bills, demonstrations, press conferences, information websites, letters to mainstream newspapers and Chinese media were some of the multiple tactics used to pressure the government for redress.

IV. EXHAUSTION OF LOCAL REMEDIES

As the pleas of the Chinese Canadian community fell on deaf ears of one government after another, finally, in 1999, a class action suit was filed against the Federal government, in the case, *Shack Jang Mack, et al. v. A.G. of Canada (Ont.)* (2001). 55 O.R. (3d) 113. Although the trial judge dismissed the action, mainly on the ground that the Canadian Charter of Rights and Freedoms could not be applied retroactively, Justice Cummings also wrote, "it is vital that Canadians acknowledge this regrettable legacy as we strive towards building a society that both celebrates diversity and protects every individual's right to equality...Parliament should consider providing redress for Chinese Canadians who paid the Head Tax or were adversely affected by the various Chinese Immigration Acts."

The appeal of his decision was denied on September 12, 2002, by the Court of Appeal for Ontario, and the highest court in the land, the Supreme Court of Canada, denied leave to appeal on April 24, 2003.

V. VIOLATIONS OF INTERNATIONAL LAW

We submit that notwithstanding the issue of retroactivity, Canada, as a member of the United Nations and a signatory to the following instruments, was and continues to be, in violation of, *inter alia*, the articles of international declarations and covenants dealing with the following points:

1) The elimination of racial discrimination

- International Convention on the Elimination of All Forms of Racial Discrimination, 1966
- Article 2, paragraph 1.c

2) The promotion of universal respect for and recognition and observance of human rights and fundamental freedoms

- Universal Declaration of Human rights, 1948
- Preamble
- International Covenant on Civil and Political Rights, 1966
- Preamble

3) Equality before the law

- Universal Declaration of Human Rights, 1948
- Article 7
- International Covenant on Civil and Political Rights, 1966
- Article 26

5) Protection of the family

- Universal Declaration of Human Rights, 1948
- Article 16(3)
- International Covenant on Civil and Political Rights, 1966
- Article 23, paragraph 1
- International Covenant on Economic, Social, and Cultural Rights, 1966
- Article 10, paragraph 1

6) Rights to be exercised without discrimination

- International Covenant on Economic, Social, and Cultural Rights, 1966
- Article 2, paragraph 2

7) Right to Effective Remedies for persons whose rights or freedoms are violated

- Universal Declaration of Human Rights, 1948
- Article 8
- International Covenant on Civil and Political Rights, 1966
- Article 2
- Article 3 (a)

- **International Convention on the Elimination of All Forms of Racial Discrimination, 1966**
-Article 6
-Article 7

In particular, we wish to highlight Canada's obligations as signatory to the Durban Declaration and Programme of Action, 2001:

Durban Declaration:

Sources, Causes, Forms and Contemporary Manifestations of Racism, Racial Discrimination, Xenophobia and Related Intolerance

Art. 14

We recognize that colonialism has led to racism, racial discrimination, xenophobia and related intolerance, and that Africans and people of African descent, and people of Asian descent and indigenous peoples were victims of colonialism and continue to be victims of its consequences. We acknowledge the suffering caused by colonialism and affirm that, wherever and whenever it occurred, it must be condemned and its recurrence prevented. We further regret that the effects and persistence of these structures and practices have been among the factors contributing to lasting social and economic inequalities in many parts of the world today.

Victims of Racism, Racial Discrimination, Xenophobia and Related Intolerance

Art. 36

We recognize that in many parts of the world, Asian and people of Asian descent face barriers as a result of social biases and discrimination prevailing in public and private institutions and express our commitment to work towards the eradication of all forms of racism, racial discrimination, xenophobia and related intolerance faced by Asians and people of Asian descent;

Art. 37

We note with appreciation that despite the racism, racial discrimination, xenophobia and related intolerance faced by them for centuries, people of Asian descent have contributed and continue to contribute significantly to the economic, social, political, scientific and cultural life of the countries where they live;

Measures of Prevention, Education and Protection Aimed at the Eradication of Racism, Racial Discrimination, Xenophobia and Related Intolerance at the National, Regional and International Levels

Art. 79

We firmly believe that the obstacles to overcoming racial discrimination and achieving racial equality mainly lie in the lack of political will, weak legislation and lack of implementation strategies and concrete action by States, as well as the prevalence of racist attitudes and negative stereotyping;

Art. 81

We recognize that democracy, transparent, responsible, accountable and participatory governance responsive to the needs and aspirations of the people, and respect for human rights, fundamental freedoms and the rule of law are essential for the effective prevention and elimination of racism, racial discrimination, xenophobia and related intolerance. We reaffirm that any form of impunity for crimes motivated by racist and xenophobic attitudes plays a role in weakening the rule of law and democracy and tends to encourage the recurrence of such acts;

Art. 83

We underline the key role that political leaders and political parties can and ought to play in combating racism, racial discrimination, xenophobia and related intolerance and encourage political parties to take concrete steps to promote solidarity, tolerance and respect;

Art. 94

We reaffirm that the stigmatization of people of different origins by acts or omissions of public authorities, institutions, the media, political parties or national or local organizations is not only a act of racial discrimination but can also incite the recurrence of such acts, thereby resulting in the creation of a vicious circle which reinforces racist attitudes and prejudices, and which must be condemned;

Provision of Effective Remedies, Recourse, Redress, and Compensatory and Other Measures at the National, Regional and International Levels

Art. 99

We acknowledge and profoundly regret the massive human suffering and tragic plight of millions of men, women and children caused by slavery, the slave trade, the transatlantic slave trade, apartheid, colonialism and genocide, and call upon States concerned to honour the memory of the victims of past tragedies and affirm that , wherever and whenever these occurred, they must be condemned and their recurrence prevented. We regret that these practices and structures, political, socio-economic and cultural, have led to racism, racial discrimination, xenophobia and related intolerance;

Art. 100-102 (although these articles refer to the slave trade, we submit that similar moral obligations are applicable to Canada to apologize and pay reparations for Chinese Canadians individuals, families, and community who are victims of Canada's acts of racism)

Art. 104

We also strongly reaffirm as a pressing requirement of justice that victims of human rights violations resulting from racism, racial discrimination, xenophobia and related intolerance, especially in the light of their vulnerable situation socially, culturally and economically, should be assured of having access to justice, including legal assistance where appropriate, and effective and appropriate protection and remedies, including the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination, as enshrined in numerous international and regional human rights instruments, in particular the Universal Declaration of

Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination;

Art. 106

We emphasize that remembering the crimes or wrongs of the past, wherever and whenever they occurred, unequivocally condemning its racist tragedies and telling the truth about history are essential elements for international reconciliation and the creation of societies based on justice, equality and solidarity;

Durban Programme of Action

Victims of Racism, Racial Discrimination, Xenophobia and Related Intolerance

Art. 45

Encourages States to address the problems of racism, racial discrimination, xenophobia and related intolerance against people of Asian descent and urges States to take all necessary measures to eliminate the barriers that such persons face in participating in economic, social, cultural and political life;

Measures of Prevention, Education and Protection Aimed at the Eradication of Racism, Racial Discrimination, Xenophobia and Related Intolerance at the National, Regional and International Levels

Art. 58

Urges States to adopt and implement, at both the national and international levels, effective measures and policies, in addition to existing anti-discrimination national legislation and relevant international instruments and mechanisms, which encourage all citizens and institutions to take a stand against racism, racial discrimination, xenophobia and related intolerance, and to recognize, respect and maximize the benefits of diversity within and among all nations in working together to build a harmonious and productive future by putting into practice and promoting values and principles such as justice, equality and non-discrimination, democracy, fairness and friendship, tolerance and respect within and between communities and nations, in particular through public information and education programmes to raise awareness and understanding of the benefits of cultural diversity, including programmes where the public authorities work in partnership with international and non-governmental organizations and other sectors of civil society;

Art.61

Urges States to work to ensure that their political and legal systems reflect the multicultural diversity within their societies and, where necessary, to improve democratic institutions so that they are more fully participatory and avoid marginalization, exclusion and discrimination against specific sectors of society;

Art. 66

Urges States to establish and implement without delay national policies and action plans to combat racism, racial discrimination, xenophobia and related intolerance, including their gender-based manifestations;

Art. 70

Urges States to take all necessary constitutional, legislative and administrative measures to foster equality among individuals and groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance, and to review existing measures with a view to amending or repealing national legislation and administrative that may give rise to such forms of discrimination;

Art. 82

Underlines the importance of combating impunity, including for crimes with a racist or xenophobic motivation, also at the international level, noting that impunity for violations of human rights and international humanitarian law is a serious obstacle to a fair and equitable justice system and ultimately, reconciliation and stability; it also fully supports the work of the existing international criminal tribunals and ratification of the Rome Statute of the International Criminal Court, and urges all States to cooperate with these international criminal tribunals;

Provision of Effective Remedies, Recourse, Redress, and Other Measures at the National, Regional and International Levels

Art. 165

Urges States to reinforce protection against racism, racial discrimination, xenophobia and related intolerance by ensuring that all person have access to effective and adequate remedies and enjoy the right to seek from competent national tribunals and other national institutions just and adequate reparation and satisfaction for any damage as a result of such discrimination. It further underlines the importance of access to the law and to the courts for complainants of racism and racial discrimination and draws attention to the need for judicial and other remedies to be made widely known, easily accessible, expeditious and not unduly complicated;

Art. 166

Urges States to adopt the necessary measures, as provided by national law, to ensure the right of victims to seek just and adequate reparation and satisfaction to redress acts of racism, racial discrimination, xenophobia and related intolerance, and to design effective measures to prevent the repetition of such acts;

VI. REQUESTS TO THE UN SPECIAL RAPPORTEUR ON RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

We hereby request that the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance

Receive and Investigate complaints from the Chinese Canadian community, head tax payers, wives, widows, and family members, and their representatives about the violations of their basic human rights caused by various *Chinese Immigration Acts* and *Chinese Exclusion Act* whose effects continue to this day;

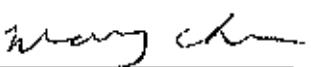
Inquire why the Canadian government has neither acknowledged that it had violated the basic human rights of the Chinese Canadian community and individual head tax payers and their families nor enter into negotiations to begin reparations;

Recommend that the Canadian Government immediately enter into negotiations with the Chinese Canadian community, individual head tax payers and their families, and their representatives on the form of redress they have the right to receive for the human rights violations they have suffered.

Submitted this 17th day of September, in the year 2003

In Montreal

BY HAND

Signed 
May Chiu

For Chinese Canadian Redress Alliance

Cc: Canadian Race Relations Foundation
Chinese Canadian National Council
Congress of Chinese Canadians
Edmonton Head Tax Redress Committee
The Honourable Mr. Jean Chretien
The Honourable Mr. Paul Martin
The Honourable Ms. Sheila Copps
The Honourable Mr. Inky Mark
Ms. Vivienne Poy, Senator
Raymond Yao, senior correspondent of Ming Pao Daily

APPENDIX A

UNITY DECLARATION TO SEEK CANADIAN GOVERNMENT REDRESS OF THE CHINESE HEAD TAX & EXCLUSION ACT

September 1, 2003

WHEREAS the Canadian government imposed an unjust and racist Head Tax on all Chinese immigrants from 1885 to 1923, whereby 81,000 Chinese immigrants paid a total of \$23 million to enter Canada, while no other immigrants were subjected to such a tax;

WHEREAS the Canadian government imposed the unjust and racist Chinese Exclusion Act from 1923 to 1947, whereby, as policy, no Chinese were permitted to enter Canada, not even direct family members of those already in the country.

We the undersigned, representing various Chinese community organizations and individuals across Canada are united to seek redress from the Canadian government based on the following principles:

1. The Canadian government shall immediately and unconditionally begin negotiations with the National Organizations and representatives of the Chinese Canadian community to redress the Head Tax and Chinese Exclusion Act. The two National Organizations active in the redress campaign are the Chinese Canadian National Council and the National Congress of Chinese Canadians.
2. The Canadian government shall offer an apology and redress the devastating social and collective effects of the Chinese Exclusion Act and the Head Tax by providing community compensation, the nature of which shall be negotiated between the government and Chinese Canadian community representatives. A starting point for community redress is MP Inky Mark's private member's bill tabled in Parliament, December 2002. Community compensation will go towards community developmental projects, as well as human rights projects, e.g., Canadian Museum for Human Rights.
3. The Canadian government shall offer an apology and redress the individual effects of the Head Tax by compensating the surviving Head Tax Payers and the surviving spouses of deceased Head Tax Payers. Compensation would be provided to the surviving Head Tax Payers and surviving spouses who are still living as of an agreed upon date to be determined.
4. We call on all Chinese Canadian community organizations and individuals to respect the rights and actions of all those affected by the Head Tax and Exclusion Act who may want to seek individual compensation from the Canadian government.
5. We call on all Canadians to support the redress campaign of the Chinese Canadian community. In winning redress of this longstanding injustice, our community will contribute to building justice and equality for all Canadians.

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William Ging Wee Dere	Engineer/Filmmaker Montreal	
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Timothy C.M. Chan	President, Hoy Sun Association of Quebec Montreal	
Dr. Joseph Du	Co-Chair, National Congress of Chinese Canadians-Prairie Member of the Order of Canada Winnipeg	
Philip Lee	Chair, Chinese Benevolent Association Member of the Order of Canada, Winnipeg	
Philip Chang	Secretary and VP, Chinese Cultural Center Winnipeg	
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